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1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION 9

3 In the matter of:)

4 Fresno Sanitary Landfill)
5 CITY OF FRESNO)

6 RESPONDENT)

7 Proceeding Under Section 106 of the)
8 Comprehensive Environmental Response,)
9 Compensation, and Liability Act of 1980)
(42 U.S.C. § 9606) as amended by the)
Superfund Amendments and Reauthorization)
Act of 1986 (SARA).)

ADMINISTRATIVE ORDER

Docket No. 90-19211

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12 I. Jurisdiction

13 This Order is issued to the City of Fresno, (Respondent) pur-
14 suant to the Comprehensive Environmental Response, Compensation,
15 and Liability Act of 1980 (as amended by the Superfund Amendments
16 and Reauthorization Act of 1986) ("CERCLA"), 42 U.S.C. §§ 9601,
17 et seq., by authority delegated to the Administrator of the
18 United States Environmental Protection Agency ("EPA" or "Agency")
19 by Executive Order 12580, 52 Fed. Reg. 2923, and further
20 delegated to the Assistant Administrator for Solid Waste and
21 Emergency Response and the Regional Administrators by EPA Delega-
22 tion Ncs. 14-8-A and 14-14-C. This authority has been
23 redelegated to the Director, Hazardous Waste Management Division,
24 EPA, Region 9.

25 The Director of the Hazardous Waste Management Division, EPA
26 Region 9, has determined that there may be an imminent and sub-
27 stantial endangerment to the public health or welfare or the en-
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1 vironment because of the release or threatened release of hazard-
2 ous substances from the Fresno Sanitary Landfill Site, Fresno,
3 California (the Site).

4 Respondent is a municipal corporation duly organized and ex-
5 isting under, and by virtue of, the Constitution of the State of
6 California and the Charter of the City of Fresno.

7 II. Findings of Fact

8 BACKGROUND

9 A. The Site was owned and operated by the Respondent as a
10 landfill from 1937 until it was closed in 1989. The Respondent
11 still owns the Site. The Site is approximately 145 acres in size
12 and is located adjacent to West Avenue between Jensen Avenue and
13 North Avenue in Fresno County, California. The population of the
14 City of Fresno is approximately 350,000. The Respondent's
15 facility does not contain liners, containment structures,
16 leachate collection systems or leak detection systems. The Site
17 has never been legally open for public dumping. The Site is bor-
18 dered on the east and west by vineyards and agricultural fields.
19 There is one residence on the north border of the landfill and
20 four residences on the south border.

21 B. Onsite hydrogeologic conditions include unconsolidated
22 alluvial sediments composed of silt, sand and gravel, derived
23 from the Sierra Nevada mountains to the east. Drilling data from
24 near the perimeter of the Site indicate the uppermost 100 feet of
25 sediments are composed of four relatively continuous sand units
26 interbedded and interlensed with finer grained silts and clays.

27 C. The Respondent has detected at least twenty hazardous
28

1 substances in the groundwater at the Site. Most of the hazardous
2 substances detected in the groundwater aquifer thus far are
3 volatile organic compounds, including, vinyl chloride,
4 tetrachloroethene, trichloroethene, methylene chloride, and
5 trans-1,2-dichloroethene.

6 D. On October 4, 1989 (54 Fed. Reg. 41015) the Site was
7 placed on the National Priorities List (NPL) as defined in Sec-
8 tion 105 of CERCLA (42 U.S.C. §9605).

9 **ENDANGERMENT**

10 E. The EPA, through its contractor Lockheed conducted soil
11 gas sampling on 7/23/90 - 8/10/90 to determine if the landfill
12 gases were migrating off the landfill via the soil. Data from
13 this sampling at the Site showed that significant amounts of
14 vinyl chloride and methane were detected on the site and were
15 migrating off site.

16 F. The soil gas testing confirmed that the vinyl chloride
17 is migrating through the soil. The migration could extend as far
18 as the nearby residences and build up in the enclosed houses.
19 This would increase the level of exposure to the residents beyond
20 that which is occurring from airborne dust from the landfill.

21 G. The known health effects of vinyl chloride are listed as
22 follows:

23 Vinyl chloride is a known human carcinogen causing liver an-
24 giosarcomas and possibly increasing incidence of tumors in the
25 brain, lung and hemolymphopoietic systems in humans. Human
26 health effects associated with chronic exposure to vinyl chloride
27 include hepatitis-like liver changes, decreased blood platelets,
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1 enlarged spleens, decreased pulmonary functions, acroosteolysis
2 (sometimes with Reynaud-like syndrome), sclerotic syndrome,
3 thrombocytopenia, cardiovascular and gastrointestinal toxicity,
4 and disturbances in vision and in the central nervous system.

5 III. CONCLUSIONS OF LAW

6 A. The Site is a "facility" as defined in Section 101 (9)
7 of CERCLA, 42 U.S.C. § 9601 (9).

8 B. Respondent is a "person" as defined in Section 101 (21)
9 of CERCLA, 42 U.S.C. § 9601 (21).

10 C. Vinyl chloride is a "hazardous substance" as defined in
11 Section 101 (14) of CERCLA, 42 U.S.C. § 9601(14).

12 D. The past, present, and potential migration of the haz-
13 ardous substance from the Site constitutes an actual or
14 threatened "release" as defined in Section 101(22) of CERCLA, 42
15 U.S.C. § 9601(22).

16 E. Respondent is a potentially responsible party pursuant
17 to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

18 IV. DETERMINATIONS

19 Based on the Findings of Fact and Conclusions of Law, the
20 Director, Hazardous Waste Management Division, EPA Region 9, has
21 made the following determinations:

22 A. The actual or threatened release of a hazardous sub-
23 stance from the Site may present an imminent and substantial en-
24 dangerment to the public health or welfare or the environment.

25 B. In order to prevent or mitigate immediate and sig-
26 nificant risk of harm to human health and the environment, it is
27 necessary that actions be taken to contain and prevent the
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1 release and potential release of hazardous substances, pol-
2 lutants, or contaminants at or from the Site.

3 C. The removal actions required by this Order are consis-
4 tent with the National Contingency Plan, 40 C.F.R. Part 300.

5 V. ORDER

6 Based upon the Findings of Fact, Conclusions of Law and
7 Determinations, EPA hereby orders the Respondent to implement the
8 following measures under the direction of EPA's On-Scene Coor-
9 dinator.

10 A. Develop a system to put a vacuum on the existing methane
11 barrier, which was constructed to keep the landfill gases from
12 migrating off-site. A plan shall be submitted to EPA within
13 seven (7) days of the effective date of this Order detailing the
14 following:

- 15 1) the method of implementation of the vacuum;
16 2) the method for determination of amount of the vacuum;
17 3) the schedule for implementation; and,
18 4) the monitoring plan for the vacuum system.

19 B. Develop a system for gas control for the entire site. A
20 plan shall be submitted to EPA within sixty (60) days of the ef-
21 fective date of this Order detailing the following:

- 22 1) the method of gas control; and,
23 2) the method and schedule of implementation.

24 C. If necessary, within two (2) days of receiving EPA comments,
25 the Respondent shall incorporate all agency comments and resubmit
26 the plan.

27 D. Upon Agency approval, the Respondent must begin to implement
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1 the plan. The Workplan and Schedule shall be considered incor-
2 porated into this Order and enforceable under the terms of this
3 Order.

4 E. A final report containing copies of all analytical data and
5 any as-built designs must be submitted to EPA no later than
6 thirty (30) days after the completion of the construction of the
7 project.

8 F. The Respondent must provide EPA with monthly update summary
9 reports once construction begins. These reports should contain a
10 summary of the previous month's activities and planned up-coming
11 events.

12 G. All sampling and analysis shall be consistent with the
13 "Removal Program Quality Assurance/Quality Control Interim
14 Guidance: Sampling, QA/QC Plan and Data Validation, " EPA OSWER
15 Directive 9360.4-01, dated February 2, 1989.

16 VI. Compliance With Other Laws

17 Respondent shall comply with all federal, state and local
18 laws and regulations in carrying out the terms of this Order. All
19 hazardous substances removed from the facility must be handled in
20 accordance with the Resource Conservation and Recovery Act of
21 1976, 42 U.S.C. Section 6921, et seq., the regulations promul-
22 gated under that Act, and Section 121(d)(3) of CERCLA, 42 U.S.C.
23 Section 9621(d)(3).

24 VII. On-Scene Coordinator

25 EPA has appointed an On-Scene Coordinator (OSC) for the Site
26 who has the authority vested in the On-Scene Coordinator by 40
27 C.F.R. Part 300, et seq. The On-Scene Coordinator for the Site
28 for the purposes of this Order is:

1 Kelly S. McCarty (H-8-3)
2 United States Environmental Protection Agency, Region 9
3 1235 Mission Street
4 San Francisco, California 94103
5 415/744-1026

6 **VIII. Submittals**

7 All submittals and notifications to EPA required by
8 this Order or any approved proposal under this Order concerning
9 the Site shall be made to the On-Scene Coordinator at the address
10 set forth in Section VII, above.

11 All approvals and decisions of EPA made regarding the sub-
12 mittals and modifications shall be communicated to Respondent by
13 the Deputy Director, Superfund, or his designee. No informal ad-
14 vice, guidance, suggestions, or comments by EPA regarding
15 reports, plans, specifications, schedules, or any other matter
16 will relieve Respondent of their obligation to obtain formal ap-
17 provals as required by this Order.

18 **IX. Access**

19 Respondent shall provide EPA employees and other representa-
20 tives with complete access to the facility at all times. Nothing
21 in this Order limits any access rights that EPA or other agencies
22 may have pursuant to law.

23 **X. Endangerment During Implementation**

24 The OSC may determine that acts or circumstances (whether
25 related to or unrelated to this Order) may endanger human health,
26 welfare or the environment and may order the Respondent to stop
27 further implementation of this Order until the endangerment is
28 abated.

29 **XI. Government Not Liable**

30 The United States Government and its employees and other

1 representatives shall not be liable for any injuries or damages
2 to persons or property resulting from the acts or omissions of
3 Respondent, their employees or other representatives caused by
4 carrying out this Order. For the purposes of this Order, the
5 United States Government is not a party to any contract with the
6 Respondent.

7 XII. Noncompliance

8 A. A willful violation or failure or refusal to comply
9 with this Order may subject Respondent to a civil penalty of up
10 to \$25,000 per day in which the violation occurs or failure to
11 comply continues, pursuant to the provisions of Section 106(b)(1)
12 of CERCLA, 42 U.S.C. Section 9606(b)(1). Failure to comply with
13 this Order without sufficient cause may also subject Respondent
14 to punitive damages of up to three times the total costs incurred
15 by the United States for site response pursuant to Section
16 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

17 B. EPA may take over the response action at any time if
18 EPA determines that Respondent is not taking appropriate action.
19 EPA may order additional actions it deems necessary to protect
20 public health, welfare, or the environment.

21 XIII. Opportunity to Confer

22 Respondent may request a conference with the Deputy Direc-
23 tor, Superfund, EPA Region 9, or his staff to discuss the provi-
24 sions of this Order. At any conference held pursuant to
25 Respondent's request, Respondent may appear in person or by coun-
26 sel or other representatives for the purpose of presenting any
27 objections, defenses or contentions which Respondent may have
28 regarding this Order. If Respondent desires such a conference,

Respondent must make a request orally within 24 hours of receipt of this Order, and confirm the request in writing immediately. A conference does not alter the effective date of the Order.

XIV. Parties Bound

This Order shall apply to and is binding upon the Respondent, their officers, directors, agents, employees, contractors, successors, and assigns.

XV. Notice of Intent to Comply

Within 72 hours of receipt of this Order, Respondent shall orally inform EPA of their intent to comply with the terms of this Order. The oral notice shall be confirmed within two days by written notice to the Director. Failure to punctually notify EPA of the Respondent's intent to fully comply will be construed by EPA as a refusal to comply.

XVI. Notice to State

Notice of the issuance of this Order has been given to the State of California.

XVII. Effective Date

Notwithstanding any conferences requested pursuant to the provisions of this Order, this Order is effective within two (2) days of the date of signature by the Director of Hazardous Waste Management Division.

IT IS SO ORDERED on this 19th day of September, 1990.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

by:


Jeff Zalikson

Director, Hazardous Waste Management Division

1 Contacts:

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